

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3125 OF 2005

1.Govind Kunj Co-operative Housing
Society Ltd.,
Lajpatrai Road, Vile Parle(W),
Mumbai : 400 056.

2. Mrs. Manjula S. Shah
Flat No.101.

3.Mr.Hamendra M. Shah
Flat No.102.

4.Mr.Dhirendra Naunitlal Desai
Flat No.202.

5.Mr.Harish S. Desai
Flat No.203.

6.Mr.Chirag D. Desai
Garage.

All of them residing at Govind Kunj
Co-op. Hsg. Soc. Ltd.
Lajpatrai Road, Vile Parle(W),
Mumbai: 400 056.

...Petitioners

V/s.

1.The State of Maharashtra

2. The Secretary(Co-operation),
Government of Maharashtra,
Mantralaya, Mumbai : 400 032.

3. Divisional Joint Registrar Co-operative

Societies(Administration), Mumbai,
Division, Mumbai.

4. Deputy Registrar,
K-West Ward, Mumbai.

5. Dr.Vishnu Acharya
Heritage Terrace, 7th Floor,
Lala Lajpatrai Road,
Opp.Bhavi Motor, Vileparle(W),
Mumbai:400 056.

...Respondents

Shri.C.P. Deogirikar for Petitioners.
Ms.Mamta Sadh, AGP for Respondent No.1 to 4.
None appears on behalf of Respondent No. 5 though he is served.

CORAM : V.M. KANADE, J.

DATED : 27th JUNE, 2007.

ORAL JUDGMENT:-

1. Heard learned counsel for the Petitioners and learned AGP for Respondent No.1 to 4. None appears on behalf of the Respondent No.5 though served.

2. The Petitioner No.1 is a Co-operative Housing Society which was registered on 29/08/1981 under the provisions of Section 9 r/w Rule 10 of Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act") as a Tenant Co-partnership Type Housing Society. The Petitioner-Society is challenging the order

passed by the Divisional Joint Registrar, Co-operative Society U/s.21 (A) of the Act whereby Society was deregistered. This order was challenged by the Petitioner-Society before the Secretary(Co-operation), Government of Maharashtra, Mumbai U/s.152 of the Act. However, said appeal was dismissed and order passed by the registrar was confirmed.

3. Brief facts which are relevant for the purpose of deciding this petition are as under:-

The Petitioner-Society was registered on 29/08/1981. Sometime in the year 1986, provisions of the Co-operative Societies Act were amended and Section 21(A) of the Act was incorporated which gave an authority to the Divisional Registrar to pass an order of deregistration of the Society.

4. Sometime in the year 1991, Respondent No.5 purchased three flats on the ground floor of the building. One flat was purchased in his own name and other two flats were purchased in the name of his wife and Son. Thereafter, he claimed the open space in front of the flats as their own property and as a result dispute was raised

between the Petitioner-Society and the Respondent No.5 and his family members. The application for membership which was filed by the Respondent No.5, was rejected by the Petitioner-Society. However, finally the Deputy Registrar allowed the application of the Respondent No.5 and directed the Petitioner-Society to make them members of the Society and further held that question of unauthorised construction could be independently dealt with by the Bombay Municipal Corporation. As a result of this dispute, the Respondent No.5 filed complaint with the Divisional Joint Registrar and submitted that the Petitioner-Society was wrongly registered in the year 1981 on account of fraud and misrepresentation by the Petitioner-Society and suppression of material facts in the application for registration. Finally said complaint was decided by the Divisional Joint Registrar and he, by Judgment and Order dated 02/07/1996 upheld the contention of the Respondent No.5 that the Society was registered in breach of Section 6 of the Provisions of the Act. The Divisional Joint Registrar also held that there was misrepresentation on the part of the original members of the Society since the members of the same family were treated as members of the different family and as such required number of

registration was fulfilled by showing names of the same family. In the meantime, Petitioner-Society also made an application U/s.7 of the Act and requested the State Government to relax condition of prescribed minimum number of members. This application was made during the pendency of appeal filed by the Petitioner-Society U/s.152 of the Act. Accordingly, the Appellate Court passed order U/s.7 of the Act and had relaxed condition of prescribed minimum number of members. Against this order, the Respondent No.5 preferred writ petition before this court vide Writ Petition No.454 of 1999 which was summarily dismissed by the learned Single Judge of this Court. In view of the said order, the Respondent No.5 preferred an appeal being Appeal No.699 of 1999. The Division Bench of this Court held that it was not open for the Appellate Authority to grant relaxation U/s.7 in the proceeding which was initiated for deregistration and it was necessary for the Society to file a separate application. Accordingly, the Division Bench remanded matter back to the State Government for deciding the same in accordance with law.

5. The State Government after matter was remanded, dismissed the appeal by its order dated 8th September, 2005. Again,

therefore, the Petitioners have preferred this petition under Article 226 of Constitution of India. During the pendency of this petition pursuant to the liberty granted by the Division Bench and this Court, the Petitioner-Society preferred a separate application before the State Government U/s.7 of the Act and said application was granted on 02/08/2006 and permission which was sought by the Society for relaxation of the said condition as laid down U/s.6 of the Act, was relaxed.

6. Thereafter, the Petitioners filed an application for amendment of the writ petition and sought to bring on record subsequent developments which had taken place. Accordingly, the Petitioners were allowed to amend the Petition and annex the order of the exemption which was passed U/s.7 of the Act.

7. After having heard the learned counsel for the Petitioners and the learned AGP for the Respondent No.1 to 4, I am of the view that in view of subsequent developments of the grant of relaxation U/s.7 of the Act, objection raised by the Respondent No.5 to the registration of the Society does not survive. Without going into other

questions raised by the complainant, it would be sufficient to observe here that since the State Government after having exercised powers vested in it U/s.7 of the Act, granted exemption to the Society from requirements of having minimum ten number of members for registration of the Housing Society and as such therefore, only objection which was raised for minimum number of members, therefore, does not survive. Another circumstance which needs to be mentioned here is that the Respondent No.5 had filed said complaint in view of several disputes between Petitioner-Society and him. None appears for the Respondent no.5 though served. I am informed by the learned counsel for the Petitioners that the Respondent No.5 has sold his three flats in the said Petitioner-Society. As such, there is no person who even otherwise, has any complaint against the registration of the Society.

8. Under these circumstances, Impugned order dated 06/08/1996 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai and order dated 08/09/2005 passed by the Secretary(Co-operation), Government of Maharashtra, Mumbai in Appeal No.65/1996 are quashed and set aside. Accordingly, Petition

is allowed. Rule is made absolute in terms of prayer clause(a).

Under these circumstances, there shall be no order as to costs.

V.M. KANADE, J.